

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UGOCHUKWU GOODLUCK  
NWAUZOR, FERNANDO AGUIRRE-  
URBINA, individually and on behalf of all  
those similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC., a Florida  
corporation,

Defendant.

No. 3:17-cv-05769-RJB

**PLAINTIFFS' MOTION TO  
AMEND NOTICE PLAN**

NOTE ON MOTION CALENDAR:  
DECEMBER 27, 2019

**I. INTRODUCTION**

The Court previously approved Plaintiffs' preliminary notice plan, which proposed direct mail to class members in the United States and notice by publication abroad. Dkt. No. 138. The Court's Order did not impose a deadline for accomplishing notice because, at the time, Defendant The GEO Group, Inc. had not yet produced a complete class list and professed difficulty in doing so. Since then, GEO has identified all class members, but the sufficiency and accuracy of the contact information produced for many class members is untrustworthy. The parties have worked together cooperatively to gather complete class data, but reliable information cannot be found making two things clear: given the sheer volume of

1 duplicate and bad addresses, a direct notice campaign is unduly expensive and unlikely to  
2 reach the majority of the class members.

3 For this reason, Plaintiffs move to supplement and amend the previous notice plan,  
4 eliminating the direct mail component. Despite acknowledging that “some of the addresses  
5 are now outdated or unreliable,” GEO does not join in Plaintiffs’ motion. But when faced  
6 with the identical circumstances in *Menocal et al., v. The GEO Group*—a separate class  
7 action against GEO concerning its Colorado immigration detention facility—the company  
8 did *not* oppose the plaintiffs’ motion seeking to forgo a direct mail campaign, which the trial  
9 court granted.

10 Because the time before trial is growing short, Plaintiffs expect to execute the revised  
11 notice plan, if approved, within 14 days of entry of an order on this motion.

## 12 II. FACTUAL BACKGROUND

### 13 A. Procedural Background.

14 The Court certified this matter as a class action on August 6, 2018, Dkt. No. 114, and  
15 approved Plaintiffs’ preliminary notice plan on January 9, 2019. Dkt. No. 138. At the time,  
16 GEO represented that it could not produce class list information (*i.e.*, identity and contact  
17 information for all class members) without U.S. Immigration and Customs Enforcement  
18 (“ICE”) approval. *Id.* at 4. The plan contemplated the use of a Third-Party Notice  
19 Administrator, including the direct mail and publication components. *Id.* at 4-6.

20 But GEO did not produce class list information until April 12 and April 29, 2019. *See*  
21 Dkt. No. 166. GEO’s second production came in the form of confidential Excel spreadsheet  
22 featuring the name, “Inmate Id,” Alien Number, and address information for each class  
23 member. The spreadsheet identified approximately 9,131 class members, but over 46,000 rows  
24

1 of address information. Whitehead Decl., ¶ 4. This meant that virtually all class members had  
2 multiple addresses: *hundreds* of class members carried more than *five* addresses while some  
3 had as many as 20 addresses listed. *Id.* Others had no address information at all. *Id.* For the  
4 majority of the class with multiple addresses, there was no indication which address was the  
5 most recent or correct forwarding address. *Id.*

6 The parties have met and conferred several times in an effort to supplement or “de-  
7 duplicate” the class list. *Id.* at ¶ 6. GEO initially directed Plaintiffs to contact ICE—the  
8 apparent source of the list—to determine the last, best address for each class member, but the  
9 agency could provide no definitive answers. *Id.* Plaintiffs also retained a data scientist as a  
10 consulting expert to analyze and cull the list, but his efforts have been limited by the quality  
11 of the data available. *Id.* at ¶ 7. The parties conferred again on November 19, and GEO  
12 confirmed that there were no further avenues to obtain additional contact information. *Id.* at ¶  
13 6. GEO acknowledged in a later email that “some of the addresses are now outdated or  
14 unreliable.” *Id.*

15 **B. Given the Imperfect Class List, Mailed Notice Is Ineffective and Unduly**  
16 **Expensive.**

17 Plaintiffs have contacted three third-party administrators about executing the notice  
18 plan, and received estimates ranging from about \$20,000 to nearly \$900,000. *Id.* at ¶ 9. The  
19 quotes for conducting a domestic direct mail campaign, as contemplated by the original notice  
20 plan, have ranged from approximately \$8,000 to \$15,000. *Id.* But these figures contemplate  
21 service on a single address, and because the class list contains an average of about 5.1 addresses  
22 for each class member, these estimates are likely to double or triple or more if Plaintiffs attempt  
23 to serve notice on all of the domestic addresses listed for each class member. *Id.*  
24

Moreover, unlike in many class actions, the dataset lacks Social Security numbers or other unique identifiers that could assist in tracing a change of address. *Id.* at ¶ 5. And many class members have common surnames, further complicating the task of sorting through the data. *Id.* It would take considerable effort and expense to ascertain which of those addresses are viable, making mailed notice within the U.S. impractical. *Id.*

Finally, a substantial number of class members are believed to be in ICE and/or GEO custody. *Id.* at ¶ 8. GEO recently confirmed that 150 class members are still in its custody, which augurs against mailing them notice. *Id.* at ¶ 8. Therefore, Plaintiffs propose distributing notice in the form of Exhibit 1 to the supporting declaration of Jamal Whitehead. As part of the publication process, Plaintiffs propose posting this form in areas of the Northwest Detention Center and other GEO facilities where class members are known to congregate. *Id.* at ¶ 10.

### III. ARGUMENT

#### A. Legal Standard.

Class notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Far from requiring perfection, notice exists “within the limits of practicability ... [and] as is reasonably calculated to reach interested parties.” *Id.* at 318. The “best notice practicable,” rather than “actual notice,” is the proper standard for providing notice to absent class members. *Silber v. Mabon*, 18 F.3d 1449, 1453-54 (9th Cir. 1994).

Class notice must also satisfy Federal Rule of Civil Procedure Rule 23(c)(2)(B), which provides that notice must clearly and concisely state in plain, easily understood language: 1)

1 the nature of the action; 2) the definition of the certified class; 3) the class claims, issues, or  
2 defenses; 4) the right to make an appearance through an attorney; 5) the right to be excluded  
3 from the class; 6) the time and manner for opting out; 7) the binding effect of a class judgment.

4 Consistent with the trends of courts and society to rely on electronic communication  
5 rather than traditional first-class mail, Rule 23(c)(2)(B) was recently amended to specify that  
6 notice may be had through “electronic means” alone.

7 **B. Publication Notice is the Best Notice Practicable Under the Circumstances.**

8 Plaintiffs propose altering the approved notice plan to eliminate the direct mail  
9 component, relying instead on notice by publication. A notice plan that omits mailed notice in  
10 favor of publication may still provide the “best notice practicable under the circumstances.”  
11 *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 593 (1997) (quoting Fed. R. Civ. P.  
12 23(b)(3)). Under these circumstances, the question becomes “whether the class as a whole had  
13 notice adequate to flush out whatever objections might reasonably be raised” to the class  
14 action, not whether *all* individuals received adequate notice. *Torrisi v. Tucson Elec. Power*  
15 *Co.*, 8 F.3d 1370, 1375 (9th Cir.1993).

16 Courts have approved class notice even if it cannot be mailed directly to class  
17 members. *See, e.g., DeJulius v. New England Health Care Employees Pension Fund*, 429  
18 F.3d 935, 946 (10th Cir. 2005) (upholding notice plan even though notice was sent to  
19 brokerage houses and not directly to class); *Cohorst v. BRE Prop., Inc.*, 2011 WL 7061923,  
20 \*6 (S.D. Cal. 2011) (“[T]he cost of locating unreliable mailing addresses from telephone  
21 numbers would be patently unreasonable in light of the limited benefit this gargantuan task  
22 would provide.”). Indeed, in *Menocal et al. v. The GEO Group, Inc.*, another case challenging  
23 GEO’s detainee work programs, the court approved a notice plan without direct mail,  
24

1 holding, “Plaintiffs’ plan to limit notice in this case to publication notice, without a mailed  
 2 component, is the best notice practicable under the circumstances and is approved.” 14-cv-  
 3 02287-JLK-MEH (D. Colo. June 20, 2019).

4 Here, publication notice is the best practical plan because even after substantial effort,  
 5 the parties have had limited success in identifying correct address information for the class  
 6 members. The majority of the class has multiple addresses while others have no or  
 7 incomplete address information. Thus, notice by mail would require mailing multiple notices  
 8 to addresses that are assuredly incorrect with no guarantee that notice will be received.  
 9 Instead, Plaintiffs’ robust publication notice plan is “best notice practicable under the  
 10 circumstances,” and satisfies absent class members’ due process rights. *See Amchem*, 521  
 11 U.S. at 593; *cf. Torrisi*, 8 F.3d at 1375 (“If an individual shareholder later claims he did not  
 12 receive adequate notice and therefore should not be bound by the settlement, he can litigate  
 13 that issue on an individual basis when the settlement is raised as a bar to a lawsuit he has  
 14 brought.”).

15 The planned digital campaign is expected to reach 15 million impressions<sup>1</sup> over a four  
 16 week period through targeted banner ads on Facebook.com and Google Display Networks in  
 17 the United States, Mexico, El Salvador, Guatemala, and Honduras. Whitehead Decl., ¶ 11.  
 18 And twice daily radio ads in Mexico City, Guadalajara, El Salvador, Guatemala, and Honduras  
 19 over the course of two weeks will further the reach of the publication campaign. Plaintiffs will  
 20 also disseminate notice through earned media channels (e.g., press releases) in the United  
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22 <sup>1</sup> “Impressions” are the total number of opportunities to be exposed to a media vehicle or  
 23 combination of media vehicles containing a notice. Impressions are a gross or cumulative  
 24 number that may include the same person more than once. As a result, impressions can and  
 often do exceed the population size.

1 States, Mexico, El Salvador, Guatemala, Honduras, and India. *Id.*

2 This is the best practical notice under the circumstances and will reach a substantial  
3 portion of the class and at a rate far surpassing direct mail given the incorrect and untrustworthy  
4 addresses GEO has provided.

5 **C. In the Alternative, to the Extent that the Court Requires a Direct Mail**  
6 **Campaign, GEO Should Bear the Cost of Notice.**

7 The default rule is that the party seeking to certify a class (typically the plaintiff) must  
8 pay for notice of class certification, but there are times when courts shift these costs to  
9 defendants. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350 (1978) (stating that “the  
10 district court has some discretion” to shift notice costs). Because GEO has failed to produce a  
11 class list identifying for each class member sufficient contact information as the court  
12 previously ordered, Dkt. No. 166, it should bear the cost of mailing notice to addresses known  
13 or likely to be untrustworthy if the Court requires notice by means of direct mail. *See e.g.,*  
14 *Mexican Workers v. Ariz. Citrus Growers*, 641 F. Supp. 259, 264 (D. Ariz. 1986) (ordering  
15 defendants to bear the cost of notice and locating class members based on “defendants’  
16 intentional failure to properly maintain records” and “because there may be substantial costs  
17 involved in locating class members whose whereabouts are unknown[.]”).

18 **IV. CONCLUSION**

19 For all the foregoing reasons, Plaintiffs respectfully request that the Court modify the  
20 Notice Plan to eliminate the mailed component of the notice campaign.

21 DATED this 12th day of December, 2019.

SCHROETER GOLDMARK & BENDER

*s/ Jamal N. Whitehead*

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 12, 2019, I electronically filed the foregoing, together with its supporting pleadings and attachments thereto, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED at Seattle, Washington this 12th day of December, 2019.

*s/ Sheila Cronan*

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